Upper Clark Fork River Basin Steering Committee
Meeting Summary
May 20, 2008

Introductions
Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Those in attendance included:

Members	**Group/Organization Represented**
Rep. Jon Sesso	Butte-Silverbow
Bob Benson	Clark Fork Coalition
Jim Dinsmore	Granite Conservation District
Tom Mostad	Natural Resource Damage Program (NRD)
Senator Dave Lewis	Lewis and Clark County/Senate District 42
Mike McLane	Montana Department of Fish, Wildlife and Parks
Jules Waber	Powell County
Agency Personnel	
Curt Martin	Montana Department of Natural Resources and Conservation (DNRC)
Bill Schultz	DNRC Missoula
John Tubbs	DNRC
Public	
Dr. Walter Hill	Seeley Lake Water District
Darry Barton	Clark Fork River Technical Advisory Committee
Dr. David Shively	University of Montana (UM) Department of Geography
Jacob Peterson-Perlman	UM Department of Geography
Staff	
Gerald Mueller	Facilitator

Agenda
- Review summary of the April 23, 2008 Meeting
- Updates
  - State of Georgetown Lake Application
  - Basin Water Supply
- Basin Domestic Water Supply
  - Big Sky Lake subdivision water rights
  - Seeley Lake Water District Supply Alternatives
  - Municipal/Domestic Water Supply paper outline
  - Basin municipal/domestic water supply survey
- DNRC 2009 Legislative Proposals
- Public Comment
- Next Meeting

April 23, 2008, 2008 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

State of Georgetown Lake Application - Gerald Mueller reported that Dr. Craig Stafford gave a presentation on May 13, 2008 to the Upper Clark Fork River Basin Remediation and Restoration Advisory Council summarizing the application. Dr. Stafford is a University of Montana Adjunct Faculty member and a primary author of the application.

Basin Water Supply - Curt Martin passed out copies of a table summarizing Montana SNOTEL Snow/Precipitation Update Report for the sites in the upper Clark Fork River and other western Montana basins. See Appendix 1. As of May 19, 2008, the snow water equivalent for the upper Clark Fork River basin is at 122% of average, and the year-to-date precipitation is at 96% of average. He noted that while the current stream flows are higher than we are used to seeing, they are just below average. Long-range weather forecasts predict that this summer will probably be hotter and drier than normal.

Comment - The current projections for stream flows at the mouth of the Blackfoot River forecasts that the flow will drop to 700 cubic feet per second (cfs) on September 1, 2008.

Comment - It is still dry out there. This past weekend, the United States Forest Service (USFS) had problems containing prescribed burns in more than one area. Fire behavior was more extreme than predicted because of dryness. The fires burned right up to the snow banks.

Comment - It will probably be a while before we recover from the extended drought that we have experienced.

Comment - Because of the eruption of the volcano in Chile, some scientific reports are that next year may be cooler than normal.

Basin Domestic Water Supply

Big Sky Lake Subdivision Water Rights - DNRC's Missoula Water Resources Manager Bill Schultz reported on an application for a water right permit filed by the Big Sky Lake Homeowners Association (BSLHA). BSLHA has for a long time sought a water right permit for domestic water use. Big Sky Lake, formerly known as Fish Lake, is a natural lake in the Fish Creek drainage in the Clearwater River basin. The lake has an impoundment on it. BSLHA has two water right claims filed on the lake, one for the fishery and another for recreation. Both claims have a 1902 priority date. The current permit application is based on the storage exemption to the upper Clark Fork River basin closure. The storage referenced is the existing storage in the lake rather than a new storage facility. Because of the local geology, ground water development is probably not an option.

The Missoula Regional Office contacted Gerald Mueller asking for his interpretation of the storage exemption to the basin closure. Mr. Mueller stated that his understanding is that an

exemption would apply to storage that would be filled during high flows so that existing water rights would not be adversely affected. The application appears problematic because it seeks to convert a non-consumptive use to a consumptive use, and does not adequately address the closure. Mr. Schultz stated that the application did not include much information and that DNRC would reply to it with a deficiency letter longer than the application.

Comment - The existing impoundment stores about one foot of water in the lake. Once, stored, this water is effectively consumed from the perspective of other water users so it may be possible to use the stored water for domestic use.
Response - The greatest use of the water for domestic purposes would occur during the summer when evaporative losses would also be highest. It is not clear that during the summer, inflows to the lake would match outflows.

Question - Does the lake have a control structure so that outflows could be managed?
Answer - I am not sure if a control structure exists.

Question - Who would be likely to object to the permit application?
Answer - DFWP and a downstream private user may object.

Seeley Lake Water District Supply Alternatives - Mike McLane reported on his analysis of alternative sources to expand the water supply for the Seeley Lake Water District (District) using a handout contained below in Appendix 2. Mr. McLane identified three possible sources for new water: new storage of surface and ground water, acquisition of existing water rights, and ground water with mitigation or augmentation. The storage option is based on the local geology which includes glacial moraine lakes and surface depressions that might be used as storage sites. Storage might be used in combination with artificial aquifer recharge and recovery. New dams on the glacial lakes may be problematic for the fishery. Existing water rights in the Clearwater have not been adjudicated. The claims for these rights have been examined by DNRC claims examiners. Two are claims for industrial use and have a year-round period of use. These claimants were for lumber mills that have closed. The other claims list agricultural as the primary or associated use and would have a period of use limited to the irrigation season. Agricultural water rights would probably have to be combined with storage to meet domestic year-round period of use requirements. The handout identifies 23 existing wells with yields greater than 60 gallons per minute (gpm).

Mr. McLane concluded that some of these three possible sources may merit closer examination. His next steps are to finish his report on the alternative sources, meet with DFWP's Region 2 manager and fishery biologists, and meet with the District board of directors.

Question - Does a comprehensive map of ground water in the Seeley Lake area exist?
Answer - I am not aware of such a map. Perhaps this area could be targeted by the Montana Bureau of Mines and Geology for study.
Question - Have the existing water rights for the closed lumber mills been abandoned?
Answer - Perhaps. The mills have been closed for 30 years.
Question - What would trigger abandonment?

Answer - Abandonment requires intent to not use the water such as dismantlement of the diversion structures and mill works.

Comment by Dr. Walter Hill - This analysis is very helpful. Thank you to both Mr. McLane and the Steering Committee.

Municipal/Domestic Water Supply Paper Outline - Mr. Mueller noted that as requested at the last Steering Committee meeting, he drafted and circulated to Steering Committee members via email an outline of a paper on the municipal/domestic water supply in the Upper Clark Fork River basin. See Appendix 3. He welcomed comments on the outline. Further work on the paper will await completion of the survey of basin municipal/domestic water supplies.

Basin Municipal/domestic Water Supply Survey - Also as requested at the last Steering Committee meeting, Mr. Mueller contracted Dr. David Shively with the University of Montana Department of Geography concerning a possible survey of basin cities and towns and water districts concerning their supplies of water for municipal/domestic use. Dr. Shively expressed interest and identified a graduate student interested in conducting the survey. Dr. Shively introduced the student, Jacob Peterson-Perlman. He asked for more specificity on directions concerning the survey. Steering Committee members agreed on the following:

- Those entities that provide community or public water supplies should be surveyed.
- Specific forecasts of growth are not necessary. Instead, the survey should attempt to determine how close to capacity the existing water systems and water rights are.

Steering Committee Action - Those members present agreed to proceed with the survey this summer. Mr. Mueller was directed to circulate to and seek comments from Steering Committee members on a proposed scope of work and budget for the survey. After receiving comments, Mr. Mueller should forward the scope of work and budget to Curt Martin so a contract between DNRC and the UM can be executed.

DNRC 2009 Legislative Proposals

John Tubbs, DNRC Water Resources Division Administrator, summarized the proposals developed by his Division for legislation for the 2009 legislative session using the handouts contained in Appendix 4. He also touched on legislative proposals under consideration by the Water Policy Interim Committee (WPIC). A summary of some of Mr. Tubbs discussion follows.

WPIC Bills

- LC 5004/5014 - These bills would clarify the authority of the counties to require community well and septic systems under certain conditions. LC 5014 is a modification of LC 5004 and was drafted as a result of the work of a Working Group convened by a representative of the Montana Association of Counties. This group has met twice and have been attended by about 20 people representing the broad range of interests who have appeared before WPIC. A major controversy related to this bill is a disagreement between the county and real estate/builder interests about the application of growth related planning statute, 76-3-511 MCA.
- LC5007 - This bill would grant the Montana Bureau of Mines and Geology (MBMG) $1.2 million to do more detailed ground water assessments than it can now do with its existing

funding. While MBMG representatives told WPIC that the additional funds could be used to focus on growth hot spots, specifically what MBMG will be able to accomplish with this additional money is not clear.

- LC5012 - This bill provides the Montana Department of Transportation (MDT) an exemption from basin closures so that it can get a water right permit for a wetlands mitigation project. More specifically, the exemption would allow MDT to get a water right for use of ground water or water that does not flow from a perennial stream for wetland restoration in compliance with the federal Clean Water Act. Activities that would be allowed include plugging drains and closing ditches.

Comment - I am concerned that LC5012 language could be interpreted to give wetland projects priority over all other users.

DNRC Proposals

- WRD01 – Act improving the water permitting process. Mr. Tubbs reviewed a chart showing how the process would be changed. The chart is included in Appendix 4.
- WRD02 – Revising closed basin permitting. This bill makes several significant changes to HB831. It requires applicants to mitigate net depletions rather than adverse effects. It eliminates statutory detail regarding the content of hydrogeologic analysis in favor of agency rules. It prohibits removal of water using vegetation or use of collection of run off from hard surfaces for mitigation plans. In addition to the summary of this bill, Mr. Tubbs passed out a marked up version of HB 831showing the specific amendment language. This document is available at http://leg.mt.gov/content/lepo/2007_2008/water_policy/staffmemos/dnrcamendments.pdf.
- WRD07 – Act refining groundwater exception certificates. This bill would attempt to address the cumulative impact of individual wells used in large subdivisions to avoid water right permit requirements. DNRC is considering to approaches. One would be to limit permit exemptions to developments of no more than 10 homes. The other would reduce the volume cap from 10 acre feet per year to a smaller amount such as 2 acre feet per year or to reduce the flow rate from 35 gallons per minute to a figure closure to what a single home would actually use. The 35 gallons per minute flow rate would probably meet the needs of 10 to 15 homes.

Question - Doesn't DEQ subdivision permits now limit the amount of use from wells?
Answer - Yes. DEQ is limiting lawn size supplied by well water through its subdivision permits.

Question - Does water quality enter into DNRC water right permit decisions?
Answer - Someone with a discharge permit can object to a new permit if the new use would reduce dilution and cause violations of the discharge permit. DNRC can deny the permit on this basis.

Question - Would you discuss the impact of the Bostwick vs. DNRC District Court decision?
Answer - A key problem with the decision is that it equates the department's "correct and complete" decision on the application with compliance with the statutory criteria for issuing a permit. DNRC has assessed correct and complete only to mean that the application includes sufficient information to assess compliance with the criteria. This ruling appears to apply to hundreds of existing permit applications rather than just future applications. If we are required to

approve existing applications based on our current understanding of "correct and complete", then many existing water rights will be at risk.

Comment by Gerald Mueller - I emailed a full copy of the Bostwick decision to Steering Committee members prior to this meeting. I am passing out a memo containing excerpts of the decision conclusions of law. See Appendix 6 for the memo.

Public Comment

There was no public comment.

Next Meeting

Unless Mr. Mueller sees the need for a meeting sooner, the next meeting will occur in September. Mr. Mueller will poll members to identify a specific meeting date.

NEVADA RIDGE	7020	10.2	8.9	115	18.7	20.6	91
N FK ELK CREEK	6250	0.9	2.2	41	15.7	19.9	79
NORTH FORK JOCKO	6330	41.0	36.9	111	55.2	59.3	93
PETERSON MEADOWS	7200	7.6	7.5	101	16.7	17.8	94
ROCKER PEAK	8000	13.1	15.2	86	16.7	21.0	80
SKALKAHO SUMMIT	7250	19.4	21.0	92	29.8	29.9	100
STUART MOUNTAIN	7400	32.1	26.8	120	36.5	40.5	90
WARM SPRINGS	7800	20.2	21.4	94	26.6	30.6	87
Basin-wide percent of average				**98**			**89**
BITTERROOT RIVER BASIN							
DALY CREEK	5780	0.0	0.7	0*	18.5	17.8	104
LOLO PASS	5240	27.1	12.0	226	40.3	39.8	101
NEZ PERCE CAMP	5650	9.8	3.6	272	25.4	26.0	98
SADDLE MTN.	7940	26.7	22.5	119	32.0	33.0	97
SKALKAHO SUMMIT	7250	19.4	21.0	92	29.8	29.9	100
TWELVEMILE CREEK	5600	7.5	2.5	300	38.3	36.8	104
TWIN LAKES	6400	40.0	31.6	127	60.4	54.5	111
Basin-wide percent of average				**139**			**103**
LOWER CLARK FORK RIVER BASIN							
HOODOO BASIN	6050	53.2	38.2	139	62.2	58.4	107
HUMBOLDT GULCH	4250	-M	0.0	*	42.8	43.0	100
LOLO PASS	5240	27.1	12.0	226	40.3	39.8	101
LOOKOUT	5140	28.1	16.7	168	50.2	46.1	109
POORMAN CREEK	5100	37.0	20.3	182	69.2	54.3	127
SLEEPING WOMAN	6150	11.5	6.0	192	26.4	27.7	95
STUART MOUNTAIN	7400	32.1	26.8	120	36.5	40.5	90
SUNSET	5540	22.1	21.8	101	46.8	41.9	112
Basin-wide percent of average				**149**			**106**
JEFFERSON RIVER BASIN							
ALBRO LAKE	8300	17.7	20.0	89	26.5	28.7	92
BARKER LAKES	8250	13.8	13.8	100	21.8	23.5	93
BASIN CREEK	7180	2.3	8.0	29	12.6	14.7	86
BEAGLE SPRINGS	8850	0.6	5.4	11	13.8	16.3	85
BLOODY DICK	7600	3.4	4.8	71	20.4	20.5	100
CALVERT CREEK	6430	0.0	0.0	*	15.0	13.2	114
CLOVER MEADOW	8600	18.6	16.5	113	25.5	24.7	103
DARKHORSE LAKE	8600	38.4	31.6	122	38.5	39.4	98
DIVIDE	7800	2.9	7.9	37	13.8	16.9	82
FROHNER MEADOW	6480	0.0	2.8	0	11.4	15.4	74
LAKEVIEW RIDGE	7400	6.5	3.8	171	20.6	19.4	106
LEMHI RIDGE	8100	7.1	6.5	109	18.3	19.4	94
LOWER TWIN	7900	18.4	18.8	98	28.3	28.7	99
MOOSE CREEK	6200	7.1	5.8	122	27.9	24.2	115
MULE CREEK	8300	14.7	14.5	101	21.7	21.4	101
ROCKER PEAK	8000	13.1	15.2	86	16.7	21.0	80
SADDLE MTN.	7940	26.7	22.5	119	32.0	33.0	97
SHORT CREEK	7000	0.0	1.0	0	10.9	10.4	105

Appendix 2

HAND OUT:

UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE MEETING

Preliminary Draft – May 19,2008

NEW WATER FOR SEELEY LAKE WATER DISTRICT

Under the existing statutory structure the Seeley Lake Water District has limited opportunities to simply apply for a new water rights. It is likely that a series of strategies may be implemented to secure water rights to meet increased demand. These strategies might include, but may not be limited to

- new storage (surface and ground water),
- acquisition of existing water right,
- ground water with mitigation / augmentation.

SURFACE WATER RIGHTS – UPPER CLEARWATER

Using the series data sorts based upon water right attributes it was possible to identify 347 unique surface water rights. Thirty-seven of these water rights had a flow rate defined in terms of cubic feet per second of 1 cfs or larger.

At least 11 of these claims merit additional investigation. A shading of the entire row identifies these. Four water rights, identified by shaded water right number only, may also merit additional examination. There rights have some additional question associated with them. They may have a much smaller associated consumptive demand, a more junior priority date or there are additional unknown attributes associated with the right or its water source.

The table below is and excerpt from the extracted data and lists of all surface water rights diverting more than 1 cfs. Table is sorted by source name. Those having irrigation as the primarily or as an associated use have an acreage listed in the last column.

Surface Water Rights, Upper Clear Water Drainage – Rights with Flow Rate > 1 cfs

Water right number	Water Right Type	Priority year	Priority month	Priority day	Source Name	Max flow rate	Unit	Max. Vol.	Max. Acres
147992	STATEMENT OF CLAIM	1912	6	13	BENEDICT CREEK	1.89	CFS		50
99966	STATEMENT OF CLAIM	1929	5	31	CAMP CREEK	1	CFS		90
99968	STATEMENT OF CLAIM	1916	1	21	CAMP CREEK	1	CFS		90
130142	STATEMENT OF CLAIM	1916	1	21	CAMP CREEK	2.5	CFS		180
130143	STATEMENT OF CLAIM	1911	5	26	CAMP CREEK	6.82	CFS		180
130144	STATEMENT OF CLAIM	1911	5	26	CAMP CREEK	10	CFS	2400	
130145	STATEMENT OF CLAIM	1916	1	21	CAMP CREEK	2.5	CFS	600	
31033	STATEMENT OF CLAIM	1916	1	21	CAMP CREEK	2.5	CFS	9	
130146	STATEMENT OF CLAIM	1911	5	26	CAMP CREEK	10	CFS	11	5
108808	STATEMENT OF CLAIM	1914	12	31	CLEARWATER RIVER	1.25	CFS		40
147993	STATEMENT OF CLAIM	1941	8	2	CLEARWATER RIVER	2.65	CFS		70
148010	STATEMENT OF CLAIM	1919	4	16	CLEARWATER RIVER	4	CFS		97
99967	STATEMENT OF CLAIM	1916	1	21	CLEARWATER RIVER (LAKE INEZ)	2.5	CFS		90
839	STATEMENT OF CLAIM	1968	5	1	CLEARWATER RIVER (SEELEY LAKE)	2.23	CFS	350	

Surface Water Rights, Upper Clear Water Drainage – Rights with Flow Rate > 1 cfs									
Water right number	Water Right Type	Priority year	Priority month	Priority day	Source Name	Max flow rate	Unit	Max. Vol.	Max. Acres
52310	STATEMENT OF CLAIM	1965	9	1	CLEARWATER RIVER. WEST FORK	5	CFS	0.1	
151302	STATEMENT OF CLAIM	1915	10	1	CLEARWATER RIVER. WEST FORK	3.5	CFS	2534	140
151303	STATEMENT OF CLAIM	1915	10	1	CLEARWATER RIVER. WEST FORK	3.5	CFS		140
149474	STATEMENT OF CLAIM	1916	4	15	DEER CREEK	4	CFS		180
99268	STATEMENT OF CLAIM	1899	5	4	DREW CREEK	1.29	CFS		30.15
103797	STATEMENT OF CLAIM	1969	6	1	FISH CREEK (BIG SKY LAKE)	6	CFS		
150395	STATEMENT OF CLAIM	1915	5	17	LODGEPOLE CREEK	1	CFS	1.5	
150398	STATEMENT OF CLAIM	1915	5	17	LODGEPOLE CREEK	1	CFS		
99267	STATEMENT OF CLAIM	1894	5	12	MORRELL CREEK	12.5	CFS		460
99269	STATEMENT OF CLAIM	1911	1	10	MORRELL CREEK	15.15	CFS		400
99270	STATEMENT OF CLAIM	1897	5	10	MORRELL CREEK	17.42	CFS		460
99275	STATEMENT OF CLAIM	1905	4	24	MORRELL CREEK	13.64	CFS		360
45366	STATEMENT OF CLAIM	1913	8	19	MURPHY CREEK	1.06	CFS		28
52279	STATEMENT OF CLAIM	1933	5	1	RICE CREEK	2	CFS	2	
52280	STATEMENT OF CLAIM	1933	5	1	RICE CREEK	2	CFS	2	
52281	STATEMENT OF CLAIM	1933	5	1	RICE CREEK	2	CFS	2	
104971	STATEMENT OF CLAIM	1913	8	6	SAWYER CREEK	4	CFS	3	2
99273	STATEMENT OF CLAIM	1905	4	10	TRAIL CREEK	3.79	CFS		100
99274	STATEMENT OF CLAIM	1911	1	10	TRAIL CREEK	10.61	CFS		274
99272	STATEMENT OF CLAIM	1911	1	10	TRAIL CREEK	10.16	CFS		274
26461	PROVISIONAL PERMIT	1980	2	5	UNNAMED TRIBUTARY OF CLEARWATER RIVER	2	CFS	120	40
99271	STATEMENT OF CLAIM	1912	11	27	UNNAMED TRIBUTARY OF CLEARWATER RIVER (GRETCHEN'S POND)	5	CFS		150

GROUNDWATER DEVELOPMENT – UPPER CLEARWATER

Six hundred and sixty one unique ground water rights were identified in the state's Centralized Water Right Record system management by DNRC. Of these ground water developments only six have asserted a rate of withdrawal greater than 150 gallons per minute. (See table below.) There were six water rights having flow rates above 150 gpm. The State Board of Land Commissioners owns two of these claims for ground water uses. Two water rights are held by the USFS. Pyramid Mountain Lumber holds two water rights.

Water Right Number	Source Type	Water Right Type	Priority year	Priority month	Priority day	Name	Max Flow Rate	Units	Max. Vol.	Max. Acre
25730	GROUND-WATER	STATEMENT OF CLAIM	1953	12	31	PYRAMID MOUNTAIN LUMBER INC	300	GPM	150	

10836	GROUND-WATER	STATEMENT OF CLAIM	1947	7	1	MONTANA. STATE OF BOARD OF LAND COMMISSIONERS	224.4	GPM	1	
10855	GROUND-WATER	STATEMENT OF CLAIM	1954	7	1	MONTANA. STATE OF BOARD OF LAND COMMISSIONERS	224.4	GPM	2	1.5
52308	GROUND-WATER	STATEMENT OF CLAIM	1962	2	26	USA (DEPT OF AGRICULTURE FOREST SERVICE)	201.96	GPM	5	
52307	GROUND-WATER	STATEMENT OF CLAIM	1966	9	21	USA (DEPT OF AGRICULTURE FOREST SERVICE)	179.52	GPM	5	
25731	GROUND-WATER	STATEMENT OF CLAIM	1953	9	26	PYRAMID MOUNTAIN LUMBER INC	150	GPM	10	

WELL LOG AND GROUND WATER REPORTS

The Montana Bureau of Mines and Geology (MBMG), as part of their larger duties, been collects and maintains record of well logs completed since the 1960's. These well logs are incorporated with geologic ground water data into a searchable database. This database, "Ground Water Information Center", is publicly accessible via the Internet.

A query of the MBMG data set was made by township, range and section. The town site of Seeley Lake lies primarily in the SE ¼ of section 34 and SE ¼ section 35 of T. 17 North, Range 15 West near the southern edge of the township. Both Townships, T17N., R. 15 W. and T.16 N., were queried. The query provided a record of 626 well logs

Of these 626 well logs only 23 had a tested yield greater than 60 gpm. (Remember these are typically short duration tests conducted by the well driller and represent only a crude evaluation of the aquifers characteristic yield.)

In Township 17 records for 109 well log were identified. The average yield was 22 gpm and median yield 14 gpm. There were several wells with a 0 yield which may indicate a "dry hole" or not data. The most prolific well had a pumped yield of 200 gpm, a total depth of 320 feet, was located in section 34 and drilled for a John and Hazel Foley.

Of the 517 well logs found in these townships 16N the average yield was 18 gpm and median 12 gpm. Again there were wells with a 0 gpm yield. The most two prolific wells had a yield of 500 and 300 gpm respectively. Both wells are near but south of Seeley lake town site. Both wells yield test is undefined. Well depths were 200 and 451 feet respectively.

Well depths and apparent water abundance causes one to speculate that these wells might be finished into a deeper more well developed aquifer unit. Both wells MBMG identifies as alluvium but of the Holocene era. One also wonders how strong the recharge connection might be between this aquifer unit and the near stream alluvium.

The table below displays well logs found having a tested yield 60 gpm or greater. Eight of these well had a tested yield greater than 100 gpm but only three had a tested yield greater than 200 gpm (Foley, Johnson and Bird.) These three wells are also relatively close to the Seeley Lake Township but to the south. The section 3 wells are close to the Pyramid Lumber water rights for ground water identified via DNRC records.

Wells greater than 60 gpm – Rank by Well Yield

GWIC Id	Site Name	Twn	Rng	Sec	Q Sec	Total Death	Static Water Level	Pwl	Yield	Test	Depth
160478	BROOKS THOMAS	17N	15W	17	BBA	98	13.5		60	AIR	98
72525	DONKEY L.A. & JESSIE	16N	15W	10	CA	15	10	8	60	OTHER	
151077	SCHNEITER DENNIS	16N	15W	11	AD	97	33.5		60	AIR	97
72537	WILDERNESS GATEWAY INN	16N	15W	11	BC	200	10	22	60	OTHER	60
144805	ARROWHEAD OWNERS ASSOCIATION	16N	15W	11	DCDC	100	45		60	AIR	93
177576	WETHERELL RICHARD & JANICE	16N	15W	12	CC	82	20		60	AIR	82

Wells greater than 60 gpm – Rank by Well Yield											
GWIC Id	Site Name	Twn	Rng	Sec	Q Sec	Total Death	Static Water Level	Pwl	Yield	Test	Depth
225537	CLATTERBUCK GUY W	16N	15W	14	DDB	40	4		60	AIR	37
202297	JENSEN KEN AND JOYCE	16N	15W	26	DAA	58	23		60	AIR	58
240153	CUNNIFF JEFF AND KATHY	16N	15W	28	BDC	98	13		60	AIR	98
235241	DAVIS ALAN & COOPER KAREN	16N	15W	30	DDA	228			60	AIR	228
206267	DAVIS ALAN AND COOPER KAREN	16N	15W	30	DDA	218			60	AIR	218
197559	MARTIN ROBIN P.	17N	15W	17	BAA	58	11.5		80	AIR	58
73026	LEWIS CHARLES	17N	15W	17	CA	66		8	80	PUMP	66
177577	CAHOON LEELYN & TERESA	16N	15W	11	CD	80	24		80	AIR	80
73023	HERBERT LESTER JR.	17N	15W	17	C	95	30	80	90	AIR	95
129445	KNUCHEL WILLIAM C	16N	15W	2		79	26	50	100	AIR	79
72538	DOUBLE ARROW RANCH ASSOCIATION	16N	15W	11	D	60.5	7	60	100	AIR	60.5
73033	THIEME WARREN E.	17N	15W	20		25		21	107	OTHER	
144804	DENNIS C.J.	16N	15W	11	BDBC	60	25		120	AIR	60
72517	F.D. JOHNSON INC.	16N	15W	3		238	4		150	OTHER	
179557	FOLEY JOHN L. AND HAZEL A.	17N	15W	34	BAAB	320	20		200	PUMP	320
72510	F.D. JOHNSON INC.	16N	15W	3		451	400		300	OTHER	40
72512	BIRD THOMAS D.	16N	15W	3	ACB	200			500	OTHER	

Appendix 3
Municipal/Domestic Water Supply in the Upper Clark Fork River Basin
May 2008

I. Introduction

Because of the closure of the upper Clark Fork River basin to most new surface water rights and enactment of HB 831 by the 2007 Montana legislature regarding the development of ground water in closed basins, expanding basin municipal/domestic water supplies may prove challenging. This paper is written to explore the challenges. It begins by discussing Montana water law, the basin closure and HB 831 requirements. It continues by summarizing a survey of the water supply situation of the basin's cities, towns, and water districts, and ends by identifying alternative approaches for expanding these supplies.

II. Background

A. Montana Water Law
    1. Prior appropriation doctrine
    2. Surface and ground water rights
    3. Growing communities doctrine/domestic water use priorities
    4. Condemnation authority
B. Upper Clark Fork River basin surface water closure
C. HB 831

III. City, Town, and Water District Water Supply Survey

A. Existing water rights and supplies
B. Supply plans

IV. Supply Expansion Alternatives

A. Acquisition of existing water rights
    1. Period of use constraints
B. Other

Appendix 4
DNRC Water Resources Division 2009 Legislative Proposals

WRD01 – Act improving the water permitting process

1. Purpose: Provide an applicant for a water use permit or change authorization notice of the department's opinion on whether they have met the criteria for issuance, earlier in the application process. By issuing an opinion to grant or to deny earlier, either the applicant or the objectors could be saved from expenses they may choose not to expend.

2. Background: An applicant for permit or change in water right must submit a correct and complete application, meaning all the blanks filled in and information showing the criteria for issuance are met. If it is correct and complete the application is public noticed and a date set for objections to be filed. If objections are received and not settled, a hearing is scheduled. An application may make it through public notice without objections but still not meet the preponderance of evidence test and the d department may issue an opinion to deny the application. By rendering a decision to deny an application earlier in the process, an applicant may decide he can not overcome the decision, withdraw and not incur public notice and hearing costs. It could save the applicant and the department the expenses of public notice and hearing if the applicant and the department settled the conflicts with the application prior to public notice. That the application could be deemed issuable before notice and objection, thus potentially avoiding expenses to objection and hearing.

3. Fiscal Impact by Fund Type:

WRD02 – Revising closed basin permitting

1. Purpose: Provide that in a closed basin (typically closed to new water surface rights) a mitigation plan is required for all groundwater applications which report a net depletion to surface water (this protects senior water rights). Revise the requirements for a hydrogeologic assessment in general scientific terms to allow a department staff expert (hydrologist) some discretion in identifying the extent and scope of the report for the specific groundwater application so reports from applicants are no more expensive than is necessary for a department decision. Provide statutory instructions of what actions are not allowed in a mitigation plan. Applicants should not be given mitigation credit for the removal of riparian vegetation (cottonwoods) or capture of rainfall from paved areas for which they have no control over or a water right to those waters for mitigation.

2. Background: The 2007 Session passed HB831 to allow groundwater appropriations in closed basins which had been prevented by TU v. DNRC (2005). The department has received 11 applications under HB831. Applicants are including information in their reports that, although required by statute, is not always necessary in a hydrogeologic analysis for department decision. In a great many groundwater cases where the applicant and everyone else acknowledges at least some water is consumed that will not make its way t the surface sources in the closed basin, applicants are because of present law spending $5,000-$15,000 for a professional report that attempts to prove that there will be no net depletion to surface water. The department would like to develop legislation that relieves applicants of the burden of unnecessary study costs yet gives it all of the information it needs for water right permits.

3. Fiscal Impact by Fund Type:

WRD03 – Update Controlled Groundwater Area Petition Process

1. Purpose: To clearly identify the process for petitioning and designating a controlled groundwater area under 85-2-506, 507 and 508 MCA, as a MAPA rulemaking process rather than through a contested case type litigation process. A rulemaking process for designating a controlled groundwater area will be less costly and less traumatic for all parties than designation after extensive litigation, and will provide all necessary public input.

2. Background: The Department has recently processed six highly contested controlled groundwater petitions by water users. Some parties have demanded in some cases that the contested case rules, i.e., litigation, apply to the process. The proceedings, sometimes with as many as x parties, have become incredibly contentious, complicated, and expensive, with parties expending large amounts of money on expert witnesses and on attorneys to move through what they claim is a contested case proceeding process. A process is needed that clearly identifies that the department through its expertise will determine whether a petition has merit to proceed to a rule-making process which will include a public hearing.

3. Fiscal Impact by Fund Type:

WRD04 – Clarify Groundwater Utilization

1. Purpose: The Department sees conflict within the current statutes for appropriating water in closed basins. Clarification is needed to allow appropriations of water to ensure the wise utilization, maximization and conservation of the resource for the benefit of the people of the state.

2. Background: There is great debate among various industries and interest groups within the state as to how appropriation of water within closed basins should be directed. A clearer direction is needed on how the state should balance essential economic development with safeguarding existing water rights. There is continued debate among scientists and water resource interest groups on the appropriate management of the state's resource in closed basins.

3. Fiscal Impact by Fund Type:

WRD05 – Floodplain map adoption efficiency

1. Purpose: Eliminate the need for state public hearings for adoption of floodplain maps that have been or are being formally adopted through a formal process by a federal agency. Provide statutory language that if the state participates as a party in the federal adoption process, the state adoption requirement in 76-5-202, MCA is satisfied unless the state decides otherwise.

2. Background: The Federal Emergency Management Act (FEMA) is proceeding on a county by county basis to update all Flood Insurance Maps. Updating involves overlaying areas identified as inundated as well as convert all the information to digital formats. Once the maps are prepared, FEMA will go through a formal notice and hearing process to adopt the new floodplain maps.

3. Fiscal Impact by Fund Type: The state agency is not funded at the present time to hold the

hearings. If the statutory requirement is not amended, the agency will need to be funded to hold public meetings for adoption of the updated floodplain maps. The cost is estimated to be $10,000 per year depending on the degree of appeals to the proposed floodplain maps.

WRD06 – General water use compliance cleanup

1. Purpose: There are parts of the current statutes that are typically not complied with and other areas that are not fully and efficiently utilized. Clarifications and modifications would provide more efficient process to comply with or to utilize those sections.

2. Background: In the areas of both short and long term leases of water and water rights for uses ranging from dust control to larger economic developments in certain river basins, amendments are needed to clarify or modify the mechanisms available for leasing larger amounts of water and smaller amounts through short term leasing of another's water right.

3. Fiscal Impact by Fund Type: None known at this time.

WRD07 – Act refining groundwater exception certificates

1. Purpose: Revise the requirements for meeting the groundwater exemption from the water use permitting process.

2. Background: Presently, anyone can automatically obtain a groundwater right when the well produces up to 35 gallons per minute and 10 acre-feet per year by simply drilling the well, pulling the water to use, and filing a notice of completion with the DNRC. In developing counties subdivision developers, rather than having one large well and one sewage treatment system, increasingly turn to individual wells for their water supply (with) individual septic tanks). As the wells for 35 gpm and 10 acre-feet are exempt from the water use permit requirements, developers do not have to prove anything in regard to how other nearby water rights might be harmed. In dosed basins the cumulative impact of multiple single wells is the same to senior surface water rights as large single wells that permits have to be obtained for. However, the senior water right has no mechanism to object to development of multiple small wells that adversely affect their senior water rights, and the developer does not have to prove senior water rights will not be harmed and is not required to mitigate any harm.

3. Fiscal Impact by Fund Type: The result of reducing the number of exemptions allowed, will increase the number of permit applications the department will have to process. Where there are objections filed to the applications, hearings will have to be conducted. With the increase of hearings there will be an increase in decisions appealed to court. The agency will require I hearing examiner at $56,830 and 1 attorney $80,816 to handle the increase applications. Funding needed would be from General Fund.

DNRC Modified Application Process